

House Bill 604

By: Representatives Stephens of the 164th, McCall of the 33rd, Gilliard of the 162nd, and Hitchens of the 161st

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5A of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the special district mass transportation sales and use tax, so as to provide for a
3 sales tax to be levied for public transportation purposes; to provide for definitions; to provide
4 for a referendum; to provide for a maximum rate and duration; to provide for conditions,
5 procedures, and limitations; to provide for an effective date; to repeal conflicting laws; and
6 for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 5A of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the
10 special district mass transportation sales and use tax, is amended by adding a new part to read
11 as follows:

12 "Part 4

13 48-8-269.37.

14 As used in this part, the term 'transportation purposes' means mass transportation and
15 includes all accompanying infrastructure, maintenance and operations, and services
16 necessary to provide access to and operate mass transportation systems and facilities,
17 including new general obligation debt and other multiyear obligations issued to finance
18 such purposes.

19 48-8-269.38.

20 (a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the
21 Constitution of this state, 159 special districts are created within this state. The
22 geographical boundary of each county shall correspond with and shall be conterminous
23 with the geographical boundary of the 159 special districts created.

24 (b) Any county:

25 (1) That is not located within a special district levying a special sales and use tax
 26 pursuant to Article 5 of this chapter;

27 (2) That is not defined as a metropolitan county special district that is governed by the
 28 provisions of Part 2 of this article; and

29 (3) In which a tax is currently being levied and collected pursuant to:

30 (A) Part 1 of Article 3 of this chapter;

31 (B) A local constitutional amendment for purposes of a metropolitan area system of
 32 public transportation set out at Ga. L. 1964, p. 1008, and the laws enacted pursuant to
 33 such local constitutional amendment; or

34 (C) Code Section 48-8-96

35 may, by following the procedures required by this part, impose for a limited period of time
 36 within the special district under this part a transportation special purpose local option sales
 37 and use tax, the proceeds of which shall be used only for transportation purposes.

38 48-8-269.39.

39 (a) Prior to the issuance of the call for the referendum required by Code Section 48-8-263,
 40 any county that desires to levy a tax under this part shall deliver or mail a written notice to
 41 the mayor or chief elected official in each qualified municipality located within the special
 42 district. Such notice shall contain the date, time, place, and purpose of a meeting at which
 43 the governing authorities of the county and of each qualified municipality are to meet to
 44 discuss possible projects for inclusion in the referendum and the rate of tax. The notice
 45 shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting
 46 shall be held at least 30 days prior to the issuance of the call for the referendum.

47 (b)(1) Following the meeting required by subsection (a) of this Code section and prior
 48 to any tax being imposed under this part, the county and all qualified municipalities
 49 therein may execute an intergovernmental agreement memorializing their agreement to
 50 the levy of a tax and the rate of such tax.

51 (2) If an intergovernmental agreement authorized by paragraph (1) of this subsection is
 52 entered into, it shall, at a minimum, include the following:

53 (A) A list of the projects and purposes qualifying as transportation purposes proposed
 54 to be funded from the tax;

55 (B) The estimated or projected dollar amounts allocated for each transportation
 56 purpose from proceeds from the tax;

57 (C) The procedures for distributing proceeds from the tax to qualified municipalities;

58 (D) A schedule for distributing proceeds from the tax to qualified municipalities which
 59 shall include the priority or order in which transportation purposes will be fully or
 60 partially funded;

61 (E) A provision that all transportation purposes included in the agreement shall be
 62 funded from proceeds from the tax except as otherwise agreed;

63 (F) A provision that proceeds from the tax shall be maintained in separate accounts and
 64 utilized exclusively for the specified purposes;

65 (G) Record-keeping and audit procedures necessary to carry out the purposes of this
 66 part; and

67 (H) Such other provisions as the county and qualified municipalities choose to address.

68 (c) The rate of the tax may be up to 1 percent, and if an intergovernmental agreement is
 69 not entered into by the county and all qualified municipalities, such rate shall be
 70 determined by the governing authority of the county.

71 (d)(1) As soon as practicable after the meeting between the governing authorities of the
 72 county and qualified municipalities and the execution of an intergovernmental agreement,
 73 if applicable, the governing authority of the county shall by a majority vote on a
 74 resolution offered for such purpose submit the list of transportation purposes and the
 75 question of whether the tax should be approved to electors of the special district in the
 76 next scheduled election and shall notify the county election superintendent within the
 77 special district by forwarding to the superintendent a copy of such resolution calling for
 78 the imposition of the tax. Such list, or a digest thereof, shall be available during regular
 79 business hours in the office of the county clerk.

80 (2) The resolution authorized by paragraph (1) of this subsection shall describe:

81 (A) The specific transportation purposes to be funded;

82 (B) The approximate cost of such transportation purposes, which shall also be the
 83 maximum amount of net proceeds to be raised by the tax; and

84 (C) The maximum period of time, to be stated in calendar years, for which the tax may
 85 be imposed and the rate thereof. The maximum period of time for the imposition of the
 86 tax shall not exceed 40 years.

87 48-8-269.40.

88 (a)(1) The ballot submitting the question of the imposition of the tax to the voters within
 89 the special district shall have written or printed thereon the following:

90 ' () YES Shall a special _____ percent sales and use tax be imposed in the special
 91 district consisting of _____ County for a period of time not to exceed

92 ' () NO _____ (40 years maximum) and for the raising of not more than an
 93 estimated amount of \$ _____ for transportation purposes?'

94 (2) If debt is to be issued, the ballot shall also have written or printed thereon, following
 95 the language specified by paragraph (1) of this subsection, the following:

96 'If imposition of the tax is approved by the voters, such vote shall also constitute
 97 approval of the issuance of general obligation debt of _____ County in the
 98 principal amount of \$ _____ for the above purpose.'

99 (b) The election superintendent shall issue the call and conduct the election in the manner
 100 authorized by general law. The superintendent shall canvass the returns, declare the result
 101 of the election, and certify the result to the Secretary of State and to the commissioner. The
 102 expense of the election shall be paid from county funds. All persons desiring to vote in
 103 favor of imposing the tax shall vote 'Yes,' and all persons opposed to imposing the tax shall
 104 vote 'No.' If more than one-half of the votes cast throughout the entire special district are
 105 in favor of imposing the tax, then the tax shall be imposed as provided in this part.

106 (c) Where such question is not approved by the voters, the county may resubmit such
 107 question from time to time upon compliance with the requirements of this part.

108 (d)(1) If the intergovernmental agreement, if applicable, and proposal include the
 109 authority to issue general obligation debt and if more than one-half of the votes cast are
 110 in favor of the proposal, then the authority to issue such debt in accordance with Article
 111 IX, Section V, Paragraph I of the Constitution is given to the proper officers of the
 112 county; otherwise, such debt shall not be issued. If the authority to issue such debt is so
 113 approved by the voters, then such debt may be issued without further approval by the
 114 voters.

115 (2) If the issuance of general obligation debt is included and approved as provided in this
 116 Code section, then the governing authority of the county may incur such debt either
 117 through the issuance and validation of general obligation bonds or through the execution
 118 of a promissory note or notes or other instrument or instruments. If such debt is incurred
 119 through the issuance of general obligation bonds, such bonds and their issuance and
 120 validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as
 121 specifically provided otherwise in this part. If such debt is incurred through the execution
 122 of a promissory note or notes or other instrument or instruments, no validation
 123 proceedings shall be necessary, and such debt shall be subject to Code Sections 36-80-10
 124 through 36-80-14 except as specifically provided otherwise in this part. In either event,
 125 such general obligation debt shall be payable first from the separate account in which are
 126 placed the proceeds received by the county from the tax. Such general obligation debt
 127 shall, however, constitute a pledge of the full faith, credit, and taxing power of the
 128 county; and any liability on such debt which is not satisfied from the proceeds of the tax
 129 shall be satisfied from the general funds of the county.

130 48-8-269.41.

131 (a)(1) If the imposition of the tax is approved at the election, the tax shall be imposed on
132 the first day of the next succeeding calendar quarter which begins more than 80 days after
133 the date of the election at which the tax was approved by the voters.

134 (2) With respect to services which are regularly billed on a monthly basis, however, the
135 resolution shall become effective with respect to and the tax shall apply to services billed
136 on or after the effective date specified in paragraph (1) of this subsection.

137 (b) The tax shall cease to be imposed on the earliest of the following dates:

138 (1) If the resolution calling for the imposition of the tax provided for the issuance of
139 general obligation debt and such debt is the subject of validation proceedings, as of the
140 end of the first calendar quarter ending more than 80 days after the date on which a court
141 of competent jurisdiction enters a final order denying validation of such debt;

142 (2) On the final day of the maximum period of time specified for the imposition of the
143 tax; or

144 (3) As of the end of the calendar quarter during which the commissioner determines that
145 the tax will have raised revenues sufficient to provide to the special district net proceeds
146 equal to or greater than the amount specified as the maximum amount of net proceeds to
147 be raised by the tax.

148 (c)(1) At any time, no more than a single tax under this part shall be imposed within a
149 special district. Any tax imposed under this part may, subject to the requirements of
150 subsection (c) of Code Section 48-8-262, be imposed at a rate of up to 1 percent but shall
151 not exceed 1 percent. Any tax imposed under this part at a rate of less than 1 percent
152 shall be in an increment of 0.05 percent.

153 (2) In any special district in which a tax is in effect under this part, proceedings may be
154 commenced, while the tax is in effect, calling for the reimposition of the tax upon the
155 termination of the tax then in effect; and an election may be held at the next scheduled
156 election for this purpose while the tax is in effect. Such proceedings for the reimposition
157 of a tax under this part shall be in the same manner as proceedings for the initial
158 imposition of the tax, but the newly authorized tax shall not be imposed until the
159 expiration of the tax then in effect.

160 (3) Following the expiration of a tax under this part, proceedings for the reimposition of
161 a tax under this part may be initiated in the same manner as provided in this part for
162 initial imposition of such tax.

163 48-8-269.42.

164 A tax levied pursuant to this part shall be exclusively administered and collected by the
165 commissioner for the use and benefit of the county and qualified municipalities within the

166 special district imposing the tax. Such administration and collection shall be accomplished
 167 in the same manner and subject to the same applicable provisions, procedures, and
 168 penalties provided in Article 1 of this chapter; provided, however, that all moneys collected
 169 from each taxpayer by the commissioner shall be applied first to such taxpayer's liability
 170 for taxes owed the state; and provided, further, that the commissioner may rely upon a
 171 representation by or on behalf of the special district or the Secretary of State that such a tax
 172 has been validly imposed, and the commissioner and the commissioner's agents shall not
 173 be liable to any person for collecting any such tax which was not validly imposed. Dealers
 174 shall be allowed a percentage of the amount of the tax due and accounted for and shall be
 175 reimbursed in the form of a deduction in submitting, reporting, and paying the amount due
 176 if such amount is not delinquent at the time of payment. The deduction shall be at the rate
 177 and subject to the requirements specified under subsections (b) through (f) of Code Section
 178 48-8-50.

179 48-8-269.43.

180 Each sales tax return remitting taxes collected under this part shall separately identify the
 181 location of each retail establishment at which any of the taxes remitted were collected and
 182 shall specify the amount of sales and the amount of taxes collected at each establishment
 183 for the period covered by the return in order to facilitate the determination by the
 184 commissioner that all taxes imposed by this part are collected and distributed according to
 185 situs of sale.

186 48-8-269.44.

187 (a) The proceeds of the tax collected by the commissioner in each special district under
 188 this part shall be disbursed as soon as practicable after collection as follows:

189 (1) One percent of the amount collected shall be paid into the general fund of the state
 190 treasury in order to defray the costs of administration; and

191 (2) Except for the percentage provided in paragraph (1) of this subsection, the remaining
 192 proceeds of the tax shall be distributed:

193 (A) Pursuant to the terms of the intergovernmental agreement, if applicable; or

194 (B) If no intergovernmental agreement has been entered into, in accordance with
 195 subsection (b) of this Code section.

196 (b) In the event an intergovernmental agreement has not been entered into, then
 197 distribution of the proceeds shall be as follows:

198 (1) The state auditor shall determine the most recent three fiscal years for which an audit
 199 under Code Section 36-81-7 has been made;

200 (2) Utilizing the audit information under paragraph (1) of this subsection, the county and
 201 each qualified municipality shall receive a proportional amount of proceeds of the tax
 202 based upon the amount of expenditures made for transportation in the most recent three
 203 fiscal years. The proportional amount for the county and each qualified municipality
 204 shall be determined by dividing the average expended on transportation during the most
 205 recent three fiscal years by the county or qualified municipality by the aggregate average
 206 expended on transportation by the county and all qualified municipalities in the special
 207 district during the most recent three fiscal years. Amounts expended on transportation
 208 include transportation maintenance and operation costs and shall correspond with
 209 classifications and subclassifications specified in the local government uniform chart of
 210 accounts under subsection (e) of Code Section 36-81-3 within section 4200, including
 211 noncapital expenditures within sections 4210-4270, and shall be reported in the local
 212 government audit. Total general fund expenditures by the local government within these
 213 categories shall be specified in the footnotes of the audited financial statement. If such
 214 transportation expenditures include maintenance and operation costs to support local
 215 government airport and transit operations, reported in functions 7561 and 7563 of the
 216 uniform chart, the general fund costs for those functions shall be included in the footnotes
 217 of the local government's audited financial report; and
 218 (3) Following the determinations made pursuant to paragraph (2) of this subsection and
 219 at least 30 days prior to the referendum, the state auditor shall certify the appropriate
 220 distribution percentages to the commissioner and the commissioner shall utilize such
 221 percentages for the distribution of proceeds for the term of the tax.

222 48-8-269.45.

223 (a) The proceeds of a tax under this part shall not be subject to any allocation or balancing
 224 of state and federal funds provided for by general law, and such proceeds shall not be
 225 considered or taken into account in any such allocation or balancing.

226 (b) The approval of the tax under this part shall not in any way diminish the percentage of
 227 state or federal funds allocated to any of the local governments under Code Section 32-5-27
 228 within the special district levying the tax. The amount of state or federal funds expended
 229 in the county or any qualified municipality within the special district shall not be decreased
 230 or diverted due to the use of proceeds from the tax levied under this part for transportation
 231 purposes that have a high priority in the state-wide strategic transportation plan.

232 48-8-269.46.

233 (a) Except as to rate, a tax imposed under this part shall correspond to the tax imposed by
 234 Article 1 of this chapter. No item or transaction which is not subject to taxation under

235 Article 1 of this chapter shall be subject to a tax imposed under this part, except that a tax
 236 imposed under this part shall not apply to:

237 (1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road
 238 farm or agricultural equipment, or locomotives;

239 (2) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport;

240 (3) The sale or use of fuel that is used for propulsion of motor vehicles on the public
 241 highways;

242 (4) The sale or use of energy used in the manufacturing or processing of tangible goods
 243 primarily for resale;

244 (5) The sale or use of motor fuel as defined under paragraph (9) of Code Section 48-9-2
 245 for public mass transit; or

246 (6) The purchase or lease of any motor vehicle pursuant to Code Section 48-5C-1.

247 (b) Except as otherwise specifically provided in this part, the tax imposed pursuant to this
 248 part shall be subject to any sales and use tax exemption which is otherwise imposed by law;
 249 provided, however, that the tax levied by this part shall be applicable to the sale of food and
 250 food ingredients as provided for in paragraph (57) of Code Section 48-8-3.

251 48-8-269.47.

252 Where a local sales or use tax has been paid with respect to tangible personal property by
 253 the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction
 254 outside this state, the tax may be credited against the tax authorized to be imposed by this
 255 part upon the same property. If the amount of sales or use tax so paid is less than the
 256 amount of the tax due under this part, the purchaser shall pay an amount equal to the
 257 difference between the amount paid in the other tax jurisdiction and the amount due under
 258 this part. The commissioner may require such proof of payment in another local tax
 259 jurisdiction as he or she deems necessary and proper. No credit shall be granted, however,
 260 against the tax under this part for tax paid in another jurisdiction if the tax paid in such
 261 other jurisdiction is used to obtain a credit against any other local sales and use tax levied
 262 in the county or in a special district which includes the county.

263 48-8-269.48.

264 No tax shall be imposed upon the sale of tangible personal property which is ordered by
 265 and delivered to the purchaser at a point outside the geographical area of the county in
 266 which the tax is imposed regardless of the point at which title passes, if the delivery is
 267 made by the seller's vehicle, United States mail, or common carrier or by private or contract
 268 carrier.

269 48-8-269.49.

270 The commissioner shall have the power and authority to promulgate such rules and
271 regulations as shall be necessary for the effective and efficient administration and
272 enforcement of the collection of the tax.

273 48-8-269.50.

274 Except as provided in Code Section 48-8-6, the tax authorized under this part shall be in
275 addition to any other local sales and use tax. Except as otherwise provided in this part and
276 except as provided in Code Section 48-8-6, the imposition of any other local sales and use
277 tax within a county or qualified municipality within a special district shall not affect the
278 authority of a county to impose the tax authorized under this part, and the imposition of the
279 tax authorized under this part shall not affect the imposition of any otherwise authorized
280 local sales and use tax within the special district.

281 48-8-269.51.

282 (a)(1) The proceeds received from the tax shall be used by the county and qualified
283 municipalities within the special district exclusively for the transportation purposes
284 specified in the resolution calling for imposition of the tax. Such proceeds shall be kept
285 in a separate account from other funds of any county or qualified municipality receiving
286 proceeds of the tax and shall not in any manner be commingled with other funds of any
287 county or qualified municipality prior to the expenditure.

288 (2) The governing authority of each county and the governing authority of each qualified
289 municipality receiving any proceeds from the tax under this part shall maintain a record
290 of each and every purpose for which the proceeds of the tax are used. A schedule shall
291 be included in each annual audit which shows for each purpose in the resolution calling
292 for imposition of the tax the original estimated cost, the current estimated cost if it is not
293 the original estimated cost, amounts expended in prior years, and amounts expended in
294 the current year. The auditor shall verify and test expenditures sufficient to provide
295 assurances that the schedule is fairly presented in relation to the financial statements. The
296 auditor's report on the financial statements shall include an opinion, or disclaimer of
297 opinion, as to whether the schedule is presented fairly in all material respects in relation
298 to the financial statements taken as a whole.

299 (b) No general obligation debt shall be issued in conjunction with the imposition of the tax
300 unless the county governing authority determines that, and if the debt is to be validated it
301 is demonstrated in the validation proceedings that, during each year in which any payment
302 of principal or interest on the debt comes due, the county will receive from the tax net
303 proceeds sufficient to fully satisfy such liability. General obligation debt issued under this

304 part shall be payable first from the separate account in which are placed the proceeds
 305 received by the county from the tax. Such debt, however, shall constitute a pledge of the
 306 full faith, credit, and taxing power of the county; and any liability on such debt which is
 307 not satisfied from the proceeds of the tax shall be satisfied from the general funds of the
 308 county.

309 (c) The intergovernmental agreement, if applicable, and resolution calling for the
 310 imposition of the tax may specify that all of the proceeds of the tax will be used for
 311 payment of general obligation debt issued in conjunction with the imposition of the tax,
 312 and, in that event, such proceeds shall be solely for such purpose except as otherwise
 313 provided in subsection (f) of this Code section.

314 (d) The intergovernmental agreement, if applicable, and resolution calling for the
 315 imposition of the tax may specify that a part of the proceeds of the tax will be used for
 316 payment of general obligation debt issued in conjunction with the imposition of the tax.
 317 The intergovernmental agreement, if applicable, and resolution shall specifically state the
 318 other purposes for which such proceeds will be used. In such a case, no part of the net
 319 proceeds from the tax received in any year shall be used for such other purposes until all
 320 debt service requirements of the general obligation debt for that year have first been
 321 satisfied from the account in which the proceeds of the tax are placed.

322 (e) The resolution calling for the imposition of the tax may specify that no general
 323 obligation debt is to be issued in conjunction with the imposition of the tax. The
 324 intergovernmental agreement, if applicable, and resolution shall specifically state the
 325 purpose or purposes for which the proceeds will be used.

326 (f)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of
 327 payment of general obligation debt issued in conjunction with the imposition of the tax,
 328 then any net proceeds of the tax in excess of the amount required for final payment of
 329 such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

330 (B) If the special district receives from the tax net proceeds in excess of the maximum
 331 cost of the transportation projects and purposes stated in the resolution calling for the
 332 imposition of the tax or in excess of the actual cost of such projects and purposes, then
 333 such excess proceeds shall be subject to and applied as provided in paragraph (2) of this
 334 subsection unless otherwise specified in the intergovernmental agreement, if applicable.

335 (C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section
 336 48-8-264 by reason of denial of validation of debt, then all net proceeds received by the
 337 special district from the tax shall be excess proceeds subject to paragraph (2) of this
 338 subsection.

339 (2) Excess proceeds subject to this subsection shall be used solely for the purpose of
 340 reducing any indebtedness of any county or qualified municipality within the special

341 district other than indebtedness incurred pursuant to this part. If there is no such other
 342 indebtedness or if the excess proceeds exceed the amount of any such other indebtedness,
 343 then the excess proceeds shall next be paid into the general fund of such county or
 344 qualified municipality, it being the intent that any funds so paid into the general fund of
 345 such county or qualified municipality be used for the purpose of reducing ad valorem
 346 taxes.

347 48-8-269.52.

348 Not later than December 31 of each year, the governing authority of each county and each
 349 qualified municipality receiving any proceeds from the tax under this part shall publish
 350 annually, in a newspaper of general circulation in the boundaries of such county or
 351 municipality, a simple, nontechnical report which shows for each purpose in the resolution
 352 calling for the imposition of the tax the original estimated cost, the current estimated cost
 353 if it is not the original estimated cost, amounts expended in prior years, and amounts
 354 expended in the current year. The report shall also include a statement of what corrective
 355 action the county or qualified municipality intends to implement with respect to each
 356 purpose which is underfunded or behind schedule and a statement of any surplus funds
 357 which have not been expended for a purpose."

358 **SECTION 2.**

359 This Act shall become effective upon its approval by the Governor or upon its becoming law
 360 without such approval.

361 **SECTION 3.**

362 All laws and parts of laws in conflict with this Act are repealed.